

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS**

ACUITY, A Mutual Insurance Company,

Plaintiffs,

v.

**JAMES SWAN and
HARDIN READY MIX, INC,**

Defendants.

No. 16-cv-865-DRH

ORDER

HERNDON, District Judge:

Pending before the Court is plaintiff's motion for default judgment as to defendant Hardin Ready Mix, Inc. ("Hardin") (Doc. 18). Based on the following, the Court denies the motion.

Obtaining a default judgment is a two-step process. First, a party must seek an entry of default from the clerk. Fed. R. Civ. P. 55 (a). Second, a party must seek a default judgment. Fed. R. Civ. P. 55(b). There is a clear distinction between the two steps. See *Lowe v. McGraw-Hill Cos.*, 361 F.3d 335, 339 (7th Cir. 2004); *see also In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004); *United States v. Di Mucci*, 879 F.2d 1488, 1490 n.3 (7th Cir. 1989).

Here, the plaintiff neglects the first step and moves directly to the second. As Rule 55 indicates, before seeking a default judgment, a plaintiff must first obtain an

entry of default from the clerk. Accordingly, the motion is improper and must be denied.

Further, the Court notes that the plaintiff has no grounds for an entry of default. Hardin was served via certified mail (under Rule 5(b)(2)(C)) on August 18, 2016 (Doc. 7). Accordingly, under Rule 12(a)(i) (answer due within 21 days of being served) and Rule 6(d) ("When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a)), Hardin had until September 12, 2016 to answer or otherwise plead. Hardin filed a motion to dismiss for lack of subject matter jurisdiction on September 12, 2016 (Doc. 12). This was proper under Rule 12(b)(1). The Court denied the motion to dismiss for lack of subject matter jurisdiction on October 5, 2016. Accordingly, Hardin has until October 19, 2016 to file its responsive pleading. *See* Rule 12(a)(4)(A).

For the reasons stated herein, the Court **DENIES** plaintiff's motion for a default judgment. (Doc. 18).

IT IS SO ORDERED.

Signed this 6th day of October, 2016.

 Digitally signed by
Judge David R. Herndon
Date: 2016.10.06
12:20:38 -05'00'

United States District Judge